IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1099 OF 2007

Shantilal Bhikubhai Modha
and
Jitendra Shantilal Modha ..Applicants.

V/s.

The State of Maharashtra. .. Respondent.

Mr K. S. Patil with Mr Deepak Girme, Advocates for the applicants.

Mr S. S. Pednekar A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 9th October, 2007.

P.C.:
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1. Heard Mr. K. S. Patil with Mr Deepak Girme, learned Advocates for the applicants and Mr S. S. Pednekar A.P.P. for the State.

2. Learned counsel for the applicants makes a statement that he is not pressing this application on behalf of the applicant no.2 (i.e. Jitendra Shantilal Modha). Statement made is accepted and taken on record. He is directed to carry out necessary amendment by deleting the name of the applicant no.2 from the array of parties. Amendment to be carried out forthwith.

3. Perused application and material on record.

4. The applicant No.1 is seeking bail under Section 439 of the Cr.P.C. read with Section 21 (4) of the Maharashtra Control of Organised Crime Act, 1999 ("the M.C.O.C.Act"for short) in C.R. No. 267 of 2005 registered under section 120(B),364A, 302, 201 of Indian Penal Code read with section 3 (1) (i), 3(2) and 3 (4) of the M.C.O.C.Act, 1999.

THE FACTUAL MATRIX:-

5. The factual matrix, in short, is that one Sagar Sahni, son of the adjoining shop-owner of the shop run by Shantilal, the present applicant, was kidnapped on 14.8.2005 by some unknown persons and demanded ransom of Rs. 2 Crore from his father. They also threatened to cut off Sagar's hands and send them by parcel if matter is reported to the police. Kidnappers called Sagar's father, extorted an amount of Rs. 50 lac for release of Sagar. Even after payment, kidnappers committed murder of Sagar and thrown his body in forest at Valsad, Gujarat. That is how, the F.I.R. came to be lodged and registered on 20.8.2005 with Pimpri Police Station.

6. The applicant No.1 and other co-accused were arrested and remanded to custody from time to time. At present the applicant no.1 is in judicial custody.

He had moved Bail Application No. 2 of 2006 before the Special Judge (Under MCOC Act), Pune. However, the said application came to be rejected by the order dated 6.1.2007. Now, the applicant-accused is before this Court to seek bail.

SUBMISSIONS:

7. Mr K. S. Patil, learned counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in the present C.R. That there is no direct or indirect material against him. That his name has neither been reflected in the F.I.R. nor any incriminating material was found against him. That the applicant has been implicated in the present case only because of reference made in the confessional statements of the two co-accused persons. That there is no material to corroborate alleged confessional statements made to show complicity of the present applicant in the present C.R. That the material on record did not show that the applicant was having any knowledge or for that purpose he had taken any active part in the alleged conspiracy. According to him, there are fair chances of getting acquittal. The learned counsel,thus, submits that this is a fit case for grant of bail.

8. Per contra, Mr Pednekar, learned A.P.P. appearing for the State, placing reliance on two confessional statements, made by co-accused Naran Jamria, took me through the contents thereof so as to demonstrate deep involvement of the present applicant in commission of crime alleged against him. Learned A.P.P. submits that the said confessional statements made by the co-accused are very much admissible in evidence since the prosecution of the applicant is under provisions of the M.C.O.C.Act. Confessional statements have implicated present applicant and his two sons. These statements if perused, they make out case to implicate present applicant who is father of two other accused persons i.e. Jithu and Nitin.

9. Learned A.P.P. has also relied upon material extracted from the "Reliance Infocomm", a Telecom Company, which suggests that the co-accused were in constant touch with the present applicant on telephone on the day when Sagar was kidnapped. Learned A.P.P., thus, submits if the totality of the evidence is seen in its proper perspective, then it would be clear that the applicant is also involved in conspiracy hatched by other accused persons including his two sons. He, thus, submits that the application for bail is liable to be rejected since there are fair chances of recording conviction of the applicant-accused.

10. Mr Pednekar,further pressed into service the provisions of Section 24 (4) of the M.C.O.C.Act, 1999 to contend that looking to the overwhelming evidence there are reasonable grounds for believing that the applicant is guilty and he is likely to commit offence while on bail. He, thus, submits that ample material is on record to show that the applicant is member of the organised crime syndicate. He, thus, prayed for rejection of prayer for bail.

CONSIDERATION :

11. Before considering rival submissions, it is necessary to turn to Section 21 (4) and (5) of the M.C.O.C.Act, 1999:-

> **21. Modified application of certain provisions of the Code.**
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> (1) ....
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> (2) ....
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> (3) ....
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> (4):- Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall, if in custody, be released on bail or on his own bond, unless---
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> (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
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> (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable

> grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
>
> (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.
>
> (6) ....
>
> (7) ....

12. The M.C.O.C.Act is a special legislation. No person, accused of an offence punishable under this Act, if in custody, can be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application of such release and where the Public Prosecutor opposes the application, the Court has to get itself satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Keeping the said provisions in mind, one has to examine whether or not prima facie material is available on record to reach to the prima facie; conclusion that the applicant is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

13. Having examined the aforesaid legal position, it is not in dispute that there is confessional statements made by co-accused implicating the present

applicant.

14. Apart from the above, th evidence on record, leading to the telephonic calls between co-accused go to show that the present applicant was in constant touch with the other accused,namely; his two sons, who had actually kidnapped deceased Sagar alongwith others. Thus, prima facie, material is available on record to infer that the applicant was involved in leading conspiracy as a member of organised crime syndicate.

15. It is not possible for any judicial mind to believe that the activities of two sons, who are involved in the said heinous crime, would not be known to the father; especially, when both of them were away from home during the entire period during which the deceased/victim was kidnapped and retained in their company. Any father, if not involved in the activities of the sons, in natural course would make enquiry with regard to whereabouts of his sons. No evidence is on record to infer that any such attempt was made by the applicant’s father to find out whereabouts of his sons involved in the alleged offence. Considered from this angle, it would be clear that he was well aware of the whereabouts of his sons and the activity in which they were involved. Apart from this, the inference based on facts, prima

facie; suggest involvement of the applicant-accused.

16. The settled legal position is that the statement of co-accused is admissible in evidence since the offence is registered under the M.C.O.C.Act. If the material available on record is appreciated in the light of other evidence during trial, then possibility of conviction of the present applicant, who is involved in commission of offence, cannot be ruled out.

17. At this stage, prima facie, one has to conclude that there is hardly any reasonable ground for believing that the applicant ia not guilty of the offences alleged against him. He being a member of the organised crime syndicate, prima facie, I do not think, it would be possible for him to keep himself away from the activities of the said organised crime syndicate after his release on bail.

18. If the aforesaid material is translated in the form of legal evidence during trial then possibility of conviction is not remote. In this view of the matter, application for bail cannot be granted.

19. In the result, application is rejected for the reasons recorded herein together with the reasons recorded by the learned Special Judge, M.C.O.C., Pune

in his order dated 29.3.2007 with which I concur and affirm.

JUDGE